

89-1183

Supreme Court, U.S.

FILED

DEC 16 1989

JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT of the UNITED STATES

October Term, 1989

EUGENE VISLISEL,

Petitioner,

v.

THE UNIVERSITY OF IOWA, et. al.,

Respondent.

ON WRIT OF CERTIORARI TO THE
IOWA STATE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

EUGENE VISLISEL, pro se
141 - 36th Avenue S.W.
Cedar Rapids, Iowa 52404
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QUESTION PRESENTED

Whether Iowa State Supreme Court acted without jurisdiction and resulting in depriving petitioner of due process of law?

PARTIES TO PROCEEDINGS BELOW

Eugene Vislisel, petitioner within, filed the action in the District Court in and for the State of Iowa, Cedar Rapids, Iowa. Appeal of District Court ruling was filed in the Iowa State Supreme Court, Des Moines, Iowa.

Defendants below are the University of Iowa, et. al. of Iowa City, Iowa.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties to Proceedings Below	i
Table of Authorities	iii
Opinions Below	2
Jurisdiction	2
Statutes Involved	4
Statement of the Case	6
Reasons for Granting Writ	17
Conclusion	26
Certificate of Service	27
Affidavit of Service	28
Appendix	
A. Opinion of the Iowa State Supreme Court, Des Moines, Iowa of September 20, 1989	A-1
B. Order of the Iowa State Supreme Court denying Rehearing	A-15

TABLE OF AUTHORITIES

CASES

	Page
Abelleria v. Dist. Ct. of Appeal	
17 Cal 2d 280, 109 p 2d 942,	
132 ALR 715	20
Dalton v. Calhoun County	
164 Iowa 187, 145 NW 498	20
Di Maio v. Reid	
132 N.J.I. 17, 37 A. 2d 829, 830 .	22
Lorenzo v. Murphy	
32 So.2d 421, 424, 159 Fla. 639 . .	21
Peterson v. John Hancock Mut. Life	
Ins. Co. of Boston, Mass.	
116 F. 2d 148 (Iowa 1941)	16
Pinkerton v. Farr	
W. Va., 220 S.E. 2d 682, 687 . . .	22

STATUTES

Iowa Code ch. 70.1(1), 1985, as	
amended	In Passim
U.S. Code, Title 28, sec. 1257(3) . .	2
Iowa Code, ch. 19A.1, 1985 . . .	In Passim
Iowa Code, ch. 70.4	In Passim

RULES

Page

Iowa Rule of Civil Procedure 105 In Passim

U.S. CONSTITUTION

Article V, Amend XIV, sec. 1 3

Article V, Amend V 6

MISCELLANEOUS

Am Jur 2d, Certiorari 20

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

EUGENE VISLISEL,

Petitioner,

v.

THE UNIVERSITY OF IOWA, et. al.,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE IOWA STATE SUPREME COURT**

To the Honorable William H. Rehnquist,
the Chief Justice and Associate Justices of
the Supreme Court of the United States.

Eugene Vislisel, the petitioner herein,
prays a writ of certiorari issue to review
the judgment of the Iowa State Supreme
Court of Des Moines, Iowa entered in the
above-entitled case on September 20, 1989.

OPINIONS BELOW

The opinion of the Iowa State Supreme Court of Des Moines, Iowa is unreported and is printed in Appendix A., page A.1. The Journal Entry of Judgment of the Iowa District Court for Linn County is printed in Appendix of record for the Iowa Supreme Court at page A.6.

JURISDICTION

The judgment of the Iowa State Supreme Court of Des Moines, Iowa (Appendix A., page A.1) was entered on Sept. 20, 1989. A timely petition for rehearing was denied on October 13, 1989 (Appendix A, page A.10). The jurisdiction of the Court is invoked under U.S. Code, Title 28, sec. 1257(3).

Final judgments rendered by the highest court of a State in which a decision could be had may be reviewed by the U.S. Supreme

Court by writ of certiorari where any right or privilege is specially set up or claimed under the Constitution. In instant case, the U.S. Constitution, Art. V, Amendment XIV, section 1 provides that no State shall deprive any person of property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Property in this instant case is a right which is guaranteed and protected by the government. Specifically, it is a statutory right to preference in appointment and employment under the mandate of the Iowa Code, ch. 70.1(1), 1985, as amended, and under Iowa Code, ch. 19A.1, 1985, both rights having been denied to petitioner by wrong doings of the inferior court.

The inferior court denied petitioner due process by denying petitioner the benefit

of the general law. The inferior court acts without jurisdiction when it has power to act except in a particular manner and to give certain kinds of relief, and it does otherwise.

Equal protection of the laws was denied petitioner when the inferior court had applied the same law (Iowa Code, sec. 70.1(1), 1985, as amended) differently to petitioner than it did in several earlier cases for others similarly situated under the law. App. A, A.6.

STATUTES INVOLVED

Iowa Code, Chapter 70.1(1), 1985, as amended:

70.1(1). In every public department and upon all public works in the state, and of the counties, cities, and school corporations thereof, honorably discharged persons from the military or naval forces of the United States in any war in which the United States has been engaged, including the Korean Conflict at any

time between June 24, 1950 and January 31, 1955, both dates inclusive, and the Vietnam Conflict beginning August 5, 1964, and ending on May 7, 1975, both dates inclusive, who are citizens and residents of this state are entitled to preference in appointment and employment over other applicants of no greater qualifications. The preference in appointment and employment for employees of cities under a municipal civil service is the same as provided in section 400.10.

Iowa Code, Chapter 19A.1, 1985:

All appointments to positions in the state service shall be made solely on the basis of merit and fitness, to be ascertained by competitive examinations, except as hereinafter specified.

U.S. Constitution, Article V, Amendment

XIV, section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Article V, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property; without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

The facts material to the consideration of the question presented are undisputed. Petitioner was denied the benefits of the general laws applicable to this case, more in particular, those of Iowa Code, chapters 70.1(1), 1985, as amended, and 19A.1, 1985.

Petitioner, an honorably discharged veteran of the Korean Conflict, had applied for employment with the University of Iowa, (University), and although he was ranked as first for three of four positions on the basis of a total composite score on University qualifying examinations, he was not offered a job, despite the fact that three of the positions were filled with non-veterans, none of whom had greater qualifications than Petitioner.

The mandates of Iowa Code, chapter 70.1(1), 1985, as amended requires that a veteran be appointed over other applicants of no greater qualifications. The fact that Petitioner was with greater qualifications than non veteran applicants is not in dispute. Moreover, nothing in the record of this case shows that Petitioner was legally disqualified from

receiving the general benefits of the laws in question. It is clear that Petitioner was denied the benefits of the Iowa Veteran Preference Law which is that of Iowa Code, chapter 70.1(1), 1985, as amended in particular.

Additionally, Petitioner was denied the benefits of another general law, that of Iowa Code, chapter 19A.1, 1985, and which law mandates that the University shall make appointments solely on the basis of merit and fitness, to be ascertained by competitive examinations, except as hereinafter specified. The inferior courts decision failed to show that any exceptions to chapter 19A.1 was preserved for the record, and there were none. And, because Petitioner was ranked as first for three of four positions on the basis of a total composite score by the taking of University

qualifying examinations, chapter 19A.1, Iowa Code, 1985 has determined Petitioner as having merit and fitness to be appointed, whether a veteran or not. See this petition, page 4.

The initial action was filed under Iowa Code, chapter 70.4, 1985, as amended, which allows a veteran to maintain an action for mandamus upon a refusal by the appointing authority to allow the preference provided by the Iowa Veterans Preference Law or chapter 70. The University had refused to provide Petitioner with the veteran preference under chapter 70.1(1) even after petitioner had made a demand for such in writing. See App. G submitted to Iowa State Supreme Court. (Record)

Fact is that although the inferior court had jurisdiction over the subject matter and the parties in the fundamental sense,

it had no power to act as it did. It only had power to act in a particular manner, and which manner was to give petitioner the relief entitled him under Iowa Code, chapters 70.1(1), 1985, as amended, and 19A.1. The inferior court acted without jurisdiction when it denied Petitioner the relief he was entitled to under the law of the land.

The inferior court has proceeded contrary to the law itself by refusing to apply the fact of this case to the law of the case, and its particular unlawful acts may be reviewed. The inferior court has greatly abused the power or discretion conferred upon it when it failed to proceed according to the essential requirements of the law.

The question presented was first raised in original petition, then in the court of

first instance by the filing of Petitioner's Application to Adjudicate Law Points Pursuant to Iowa Rule Civil Procedure 105 on January 13, 1988. See record. The following questions was preserved in this application to the court of the first instance:

WHETHER THE UNIVERSITY MAY MAKE APPOINTMENTS TO POSITIONS ON A BASIS OTHER THAN MERIT AND FITNESS WHICH IS TO BE ASCERTAINED BY THE COMPETITIVE EXAMINATIONS WHEN COMPETITIVE EXAMINATIONS ARE SOLELY UTILIZED?

and

WHETHER THE UNIVERSITY MAY PASS OVER A VETERAN HAVING HIGHEST COMPETITIVE EXAMINATION SCORE ON THE CERTIFICATE OF ELIGIBLES TO HIRE NON-VETERANS WITH LOWER SCORES UNDER CH. 70 IOWA CODE (1985)?

Iowa Rule of Civil Procedure 105 says:

105. Separate adjudication of the law points. The court may, in its discretion, and must on application of either party, made after issues

joined and before trial, separately
hear and determine any point of law
raised in any pleading which goes to
the whole or any material part of the
case. It shall enter an appropriate
final order before trial of the
remaining issues, adjudicating the
point so determined, which shall not
be questioned on the trial of any
part of the case of which it does not
dispose. If such ruling does not
dispose of the whole case, it shall
be deemed interlocutory for purposes
of appeal.

Trial court had refused to comply with
Iowa Rule of Civil Procedure 105 and it did
not at any time make a determination upon
the questions Petitioner had submitted
pursuant to Rule 105. Petitioner then
filed a Request for Ruling on his Applica-

tion to Adjudicate law Points on June 3, 1988, which was prior to trial. Trial Court had ignored this request. See record.

Petitioner's brief to the Iowa State Supreme Court at pp. 46-47 raised the question again:

Whether Trial Court Errored By Refusing To Adjudicate Law Points Submitted And Filed By Application Dated January 13, 1988 Prior To Trial?

Petitioner also argued this question before the Iowa Supreme Court in oral argumentation, which was without rebuttal as the University did not present an oral argumentation. The Iowa State Supreme Court passed upon this question at page 9 of the judgment by saying:

Any error in the court's failure to grant Vislisl's application for adjudication of law points would be harmless in view of our determination

that the amended statute did not provide the relief requested.

See App. A at page A.9.

Petitioner was injured by the inferior court's determination that his application for law points need not be adjudicated because it determined that the amended statute (chapter 70, Iowa Code, 1985, as amended) did not provide the relief requested. This is because we have already seen that the amended statute did, in fact, provide the relief petitioner had requested. Because the non veterans hired had no greater qualifications than petitioner, a writ of mandamus should have issued under Iowa Code, chapter 70.4, 1985, as amended. The inferior court did not have the power to act in the manner in which it did and it did not have the power to deny the relief requested by petitioner.

Iowa Code, chapter 19A.1 determined petitioner as having the greater qualifications, and ch. 70.1(1), 1985, as amended determined that petitioner should have been appointed because the non veterans had no greater qualifications, and chapter 70.4 determines that a writ of mandamus should have issued to correct the wrongs of the University. The inferior court refused to apply the facts of the case to the law of the case. When the inferior court proceeds in some manner contrary to law, the particular unlawful act may be reviewed by writ of certiorari.

Petitioner has timely and properly raised the question presented to both the trial and the Iowa State Supreme Court in his briefs, in passim. Each court was told repeatedly that a refusal to apply well settled principles of law to an indispu-

table state of facts in not within the court's legal discretion. This legal principle was determined in Peterson v. John Hancock Mut. Life Ins. Co. of Boston, Mass.,. 116 F. 2d 148 (Iowa 1941) and quoted at pages 26, 35, 38, 40, and 42 of petitioner's brief to the Iowa State Supreme Court, and again argued at oral argumentation. See record.

The question presented was timely and properly raised in the lower courts.

REASONS FOR GRANTING WRIT

The decision of the inferior court is one of putting the University's politically desired result above legitimate process in law. It is one of where the court has allowed itself to be used as a means of displacing democratic choice by the imposition of the University's moral principles.

The Iowa Legislature clearly intended that a non veteran cannot pass over that of a wartime veteran when the non veteran has no greater qualifications than the veteran. When a veteran is on the list of eligibles, a non veteran cannot be appointed unless the non veteran has greater qualifications. This is exactly what the law does say under Iowa Code, chapter 70.1(1), 1985, as amended. This is what the Iowa Legislature has said in very clear language. We have

seen under the facts of this case that the petitioner clearly had as great or greater qualifications under Iowa Code, chapter 19A.1, 1985 than the appointed non veterans. We have seen under the facts of this case, that the inferior courts should then have issued a writ for mandamus under Iowa Code, 1985, chapter 70.4 to correct the wrongs of the University.

The Iowa Legislature intended that the wartime veterans receive a real preference in appointment and employment, they never did intend an illusory preference, the later being one where a veteran is given extra points, but when these extra points are useless as in a case where non veterans may be appointed over wartime veterans even when the non veterans qualifications are not greater than the wartime veterans.

Clearly, the inferior court has jurisdiction over the subject matter and the parties in the fundamental sense, but it had no power to act except to construe Iowa Code, chapters 70.1(1), 1985, as amended, and 19A.1 for what these chapters do say, and to have applied the law to the facts of this case. A refusal to do otherwise is not within the inferior court's legal discretion. Peterson v. John Hancock Mut. Life Ins. Co. of Boston, Mass., 116 F. 2d 148 (Iowa 1941). It is also without the inferior court's legal discretion to refuse to apply Iowa Code, 1985, chapter 70.4 to this case when petitioner's qualifications were as great or greater than the non veteran appointees to positions petitioner applied for. Though a court has jurisdiction over the subject matter and the parties in the

fundamental sense, if it has no power to act except in a particular manner, or to give certain kinds of relief, and it acts otherwise, it is acting without jurisdiction. Abelleria v. District Ct. of Appeal, 17 Cal 2d 280, 109 P 2d 942, 132 ALR 715. Also see page 786 14 Am Jur 2d, section 9, Certiorari.

Not only did the inferior court act contrary to the law, but its procedure was contrary to Iowa Rule of Civil Procedure 105, and the particular unlawful acts then may be reviewed. Dalton v. Calhoun County, 164 Iowa 187, 145 NW 498. Also see page 783 of 14 Am Jur 2d Certiorari, sec 6. A writ for certiorari should lie because it is shown that the inferior court has proceeded illegally and no appeal is allowed or other mode provided for reviewing i

proceedings. See page 782 and 783, 14 Am Jur 2d Certiorari, sec 6, footnote 4.

The inferior court has failed to proceed according to the essential requirements of the law, and it has greatly abused the power conferred on it, and a writ for certiorari should lie. See page 787 Am Jur 2d Certiorari, sec. 10.

A writ for certiorari should lie because 'certiorari' is not limited to an inquiry as to jurisdiction but extends to the manner in which that jurisdiction is exercised, and the court may examine the evidence and determine whether evidence justifies finding of inferior court. See Lorenzo v. Murphy, 32 So. 2d 421, 424, 159 Fla. 639.

A writ for certiorari should lie because the inferior court was not fundamental fair in instant case as we have seen

the facts of this case. Aside from all else, due process means fundamental fairness. See Pinkerton v. Farr, W. Va., 220 S.E. 2d 682, 687.

A writ for certiorari should lie in instant case because we have seen from the facts of this case that Petitioner did not have the benefit of general law. The guarantee of due process requires that every man have benefit of general law. Di Maio v. Reid, 132 N.J.I. 17, 37 A. 2d 829, 830.

Finally, a writ for certiorari should lie in instant case because the means of a law shall have real and substantial relation to the object. In instant case, the inferior court has defeated the law, that of the Iowa Veteran Preference Law or chapter 70.1(1), 1985, as amended of the Iowa Code by choosing to apply only a

portion of the law or that of chapter 70.1(4) to this instant case. The inferior court at page 8 of its judgment said that it had determined that the amended statute did not provide the relief requested. See App. A at page A.9. Yet, the amended statute, that of chapter 70.1(1), Iowa Code, 1985, as amended, and as is seen at page 5 of the inferior courts judgment (See App. A at page A.6) does clearly show that the applicable law says that a wartime veteran is entitled to a preference in appointment and employment over other applicants of no greater qualifications. When the inferior court refused to apply Iowa Code, chapter 70.1(1), 1985, as amended, to this case, it had defeated the law itself, because Iowa Code, chapters 70.1(1), 1985, as amended and 70.4 does provide the means for a real and

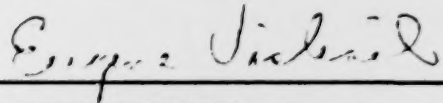
substantial relation to the object of the Iowa Veteran Preference Act. When the inferior court has ignored the mandates of the law, it has acted without jurisdiction and the concept of "due process of law" has not been met. The inferior court's departure from those recognized and established requirements of the law in this instant case has the effect of depriving the petitioner of his constitutional rights under U.S. Constitution, Article V, Amendment XIV, section 1 and Article V, Amendment V, more in particular that of due process. The inferior court has lacked the power to act in this instant case because it has not met the conditions essential to the application of due process. The Constitution does not allow justices to set aside the Iowa Veterans Preference Law, or

any part of it, as it is the result of the
Iowa Legislative majority.

CONCLUSION

For the foregoing reasons this petition
for a writ of certiorari should be granted.

Respectfully submitted,



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(319) 365-8848

Dated December 15th, 1989

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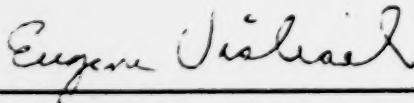
December 15th, 1989

Appendices

CERTIFICATE OF SERVICE

I, Eugene Vislisl, pro se for Eugene Vislisl, petitioner herein, hereby certify that on December 15th, 1989, I served a foregoing Petition for Certiorari and Appendix on The University of Iowa, Respondent herein, by mailing three (3) copies in a duly addressed envelope, with first class postage prepaid to Thomas J. Miller, Attorney General, and Joan Fitzpatrick Bolin, Assistant Attorney General, attorney of record for Respondent at Hoover State Office Building, Des Moines, Iowa 50319.

Dated: December 15th, 1989.



EUGENE VISLISEL, Pro Se
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AFFIDAVIT OF SERVICE

I, Eugene Vislisel, pro se for petitioner do herein depose and say that on December 15th, 1989, I served three copies of the Petition for Certiorari and Appendix on The University of Iowa, Respondent herein, by mailing three (3) copies thereof, in a duly addressed envelope, with first class postage prepaid to Thomas J. Miller, Iowa Attorney General, and Joan Fitzpatrick Bolin, Assistant Iowa Attorney General, counsel of record for The University of Iowa, at Hoover State Office Building, Des Moines, Iowa 50319.

Eugene Vislisel
EUGENE VISLISEL

Subscribed and sworn to before me by Eugene Vislisel this 15th day of December, 1989.

Sarah J. Little
Notary Public in and for the
State of Iowa



APPENDIX A
IN THE SUPREME COURT OF IOWA

NO. 264 / 88-1519

Filed September 20, 1989

EUGENE VISLISEL,	F I L E D
Appellant,	Sep 20 1989
vs.	Clerk Supreme Court
THE UNIVERSITY OF IOWA, et al.,	
Appellee.	

Appeal from the Iowa District Court for Linn County, Paul J. Kilburg, Judge.

Appeal from district court ruling that denied petition for writ of mandamus and claim for damages under the veterans preference law. AFFIRMED.

Eugene Vislisel, Cedar Rapids, pro se.

Thomas J. Miller, Attorney General, and Joan Fitzpatrick Bolin, Assistant Attorney General, for appellee.

Considered by McGiverin, C.J., and Larson, Lavorato, Neuman, and Andreasen, J.

APPENDIX A

ANDREASEN, J.

In this appeal we must determine the nature of the veterans preference under Iowa Code chapter 70 (1987) and rules adopted by the State Board of Regents pursuant to the merit system law, Iowa Code chapter 19A. The district court concluded that the veterans preference for wartime veterans who apply for merit system positions consist of points added to scores on qualifying examinations. Because the veteran, Eugene Vislislis, was awarded the points provided by the statute, the district court denied his petition for a writ of mandamus. We affirm.

Eugene Vislislis is a veteran of the Korean Conflict. In July 1985 he applied for employment with the University of Iowa (University). The application indicated he

APPENDIX A

was a veteran of the United States Armed Forces. The University added five points to his examination score as a veterans preference under Iowa Code section 19A.9(21). Vislisel's name appeared on University personnel services eligibility lists, and he was interviewed for four clerk typist III positions. He was among the top six applicants for each position and was ranked first for three of the four positions on the basis of his total score on the qualifying examination. He was not offered a job. The applicants hired for at least three of the positions were not veterans.

Vislisel filed a petition for writ of mandamus in district court seeking to require the University to appoint him to one of the positions and to allow recovery

APPENDIX A

of damages for lost earnings. He alleged that the veterans preference law, Iowa Code section 70.1, required his appointment. The action was filed under Iowa Code section 70.4, which allows an applicant to maintain an action for mandamus upon a refusal by the appointing authority to allow the preference provided by the veterans preference law.

The court concluded that the provisions of section 19A.9(21) provided a specific, quantifiable manner in which the general veterans preference of chapter 70 is given effect. As such, the University is free to select an employee from among the top six applicants, as provided by section 19A.9(7), even when a veteran is among them. The district court held that the University could not be required to hire

APPENDIX A

Vislisl. He appeals from the court's refusal to issue a writ of mandamus.

In 1904 the Iowa Legislature adopted a veterans preference law in public employment. 1904 Iowa Acts ch. 9 (codified at Iowa Code ch. 70). The act provided that honorably discharged veterans of the Civil War be entitled to preference in appointment, employment and promotion over other persons of equal qualifications. A refusal to allow the preference entitled the veteran to bring an action for damages and for mandamus to right the wrong. Through the years, the veterans preference law has been amended to include veterans of other wars and conflicts in which the United States has been involved. See Iowa Code Ann. section 70.1 historical note (West 1973).

APPENDIX A

In 1907 the Iowa legislature adopted a civil service statute providing for appointment, employment, promotion and discharge of municipal employees. 1907 Iowa Acts ch. 48, section 14 (codified at Iowa Code ch. 400). In 1911 it amended the statute to provide for a veterans preference. 1911 Iowa Acts ch. 54, section 2 (codified at Iowa Code section 400.10). The purpose of the civil service legislation was to get away from the evils of the spoils system, political considerations, and favoritism in appointments to public service. Herman v. Sturgeon, 228 Iowa 829, 838, 293 N.W. 488, 492 (1940). It sought to secure efficiency by establishing a merit system which based eligibility to appointment upon fitness for service. Id.

APPENDIX A

In 1967 the Iowa Legislature adopted an act to establish a merit system of personnel administration for state employees. 1967 Iowa Acts ch. 95 (codified at Iowa Code ch. 19A). Its general purpose was to establish for the State of Iowa a system of personnel administration based upon merit principles and scientific methods governing the appointment, promotion, welfare, transfer, layoff, removal and discipline of its civil employees. This act provided for the establishment of eligibility lists for appointment based upon competitive examination test scores. The appointing authority is to appoint a person among the top six applicants. Iowa Code section 19A.9(7). The act also provided for a veterans preference. It directed the

APPENDIX A

adoption of administrative rules that provided for veterans preference through a provision that honorably separated wartime veterans shall have five points added to the grade or score attained in qualifying examinations for appointment to jobs. Iowa Code section 19A.9(21). Hence, the Board of Regents adopted an administrative rule that veteran preference shall be given by the addition of extra points to examination scores as provided by law. 681 Iowa Admin. Code 3.56(8)(1987).

Under the veterans preference law, Iowa Code Chapter 70, we construed the preference for appointment in hiring to be mandatory, controlling, and reconcilable with other Iowa civil service statutes. See e.g., Dennis v. Bennet, 258 Iowa 664, 669, 141 N.W. 2d 123, 126 (1966); Geyer v.

APPENDIX A

Triplett, 237 Iowa 664, 22 N.W. 2d 329 (1946); Herman v. Sturgeon, 228 Iowa 829, 293 N.W. 488 (1940). In 1985 the legislature amended the provisions of Iowa Code section 70.1. 1985 Iowa Acts ch. 50, section 1. The amendment with deletions struck through and additions underscored reads as follows in pertinent parts:

1. In every public department and upon all public works in the state, and of the counties, cities, and school corporations thereof, honorably discharged persons from the military or naval forces of the United States in any war . . . , who are citizens and residents of this state ~~shall be~~ are entitled to preference in appointment, and employment, ~~and promotion~~ over other applicants of no greater qualifications. The preference in appointment and employment for employees of cities under

APPENDIX A

a municipal civil service is the same as provided in section 400.10.

2. In all jobs of the state and its political subdivisions, an application form shall be completed. The application form shall contain an inquiry into the applicant's military service during the wars or armed conflicts as specified in subsection 1.

3. In all jobs of political subdivisions of the state which are to be filled by competitive examination or by appointment, public notice of the application deadline to fill a job shall be posted at least ten days before the deadline in the same manner as notices of meetings are posted under section 21.4.

4. For jobs in political subdivisions of the state that are filled through a point-rated qualifying examination, the preference afforded to veterans shall be equivalent to that provided for municipal civil service systems in section 400.10.

APPENDIX A

1985 Iowa Acts ch. 50, section 1 (effective July 1, 1985) (codified at Iowa Code section 70.1).

We must now construe the veterans preference law as amended in 1985. In construing statutes the court searches for the legislative intent as shown by what the legislature said, rather than what it should or might have said. Iowa R. App. P. 14(f)(13). The amended statute clearly directs a preference for veterans in the form of additional points for jobs filled through a point-rated qualifying examination. See Iowa Code section 70.1(4). It brings the veterans preference policy for state and city employees under section 70.1 in line with the veterans preference for state merit system employees under section 19A.9.

APPENDIX A

A statutory amendment may indicate the legislative intent to change the meaning of the statute or to clarify it. Barnett v. Durant Community School Dist., 249 N.W. 2d 626, 629 (Iowa 1977). We assume an amendment is adopted to accomplish a purpose and was not simply a futile exercise of legislative power. Mallary v. Paradise, 173 N.W. 2d 264, 267 (Iowa 1969).

The clear language of the amendment evidences a legislative intent to modify the broad, general veterans preference. Specifically, it recognizes the addition of points to a veteran's examination score as an appropriate preference for veterans. The amendment does not affect the authority of the appointing agency to select one of the six qualified applicants on the eligibility list.

APPENDIX A

The cases relied upon by Vislisel are no longer applicable because of the amendment of section 70.1. They were decided prior to the advent of the point-rated qualifying examination for state employees introduced by the merit system law. They were based upon a statute that did not specifically provide for additional points to be given those veterans who qualified by reason of service during war or hostility.

We are mindful of the expressed legislative intent to reward veterans for their sacrifice and contributions to this state. We also recognize the legislature's power to provide to modify preference benefits. We must apply the statute according to its terms. Iowa Nat'l Mut. Ins. Co. v. Granneman, 438 N.W. 2d 840, 841 (Iowa 1989).

APPENDIX A

On review of the record we find no abuse of discretion in the appointment of other qualified applicants rather than the veteran, Vislisel. Any error in the court's failure to grant Vislisel's application for adjudication of law points would be harmless in view of our determination that the amended statute did not provide the relief requested.

We affirm the court's denial of the writ of mandamus and recovery of damages.

AFFIRMED.

APPENDIX A
IN THE SUPREME COURT OF IOWA
NO. 88-1519

ORDER

EUGENE VISLISEL,	F I L E D
Appellant,	Oct 13 1989
vs.	Clerk Supreme Court
THE UNIVERSITY OF IOWA, et al.,	
Appellee.	

After consideration by the court, en banc, appellant's Petition for Rehearing in the above-captioned matter is hereby overruled and denied.

Done this 13th day of October, 1989.
The Supreme Court of Iowa

(s) _____
Arthur A. McGiverin
Chief Justice

Copies to:
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Merle Wilna Fleming
Joan Fitzpatrick Bolin
Assistant Attorney Generals
L O C A L

